

§ 253.31

unencumbered assets tests specified under §§ 253.21 through 253.28.

(d) You must submit your application to renew OSFR using an indemnity by the first calendar day of the 5th month after the close of your indemnitor's fiscal year. You may submit to MMS your initial application to demonstrate OSFR using an indemnity at any time.

(e) Your indemnitor must identify a U.S. agent for service of process.

§ 253.31 How can I use a surety bond as OSFR evidence?

(a) Each bonding company that issues a surety bond that you submit to MMS as OSFR evidence must:

(1) Be licensed to do business in the State in which the surety bond is executed;

(2) Be certified by the U.S. Treasury Department as an acceptable surety for Federal obligations and listed in the current Treasury Circular No. 570;

(3) Provide the surety bond on Form MMS-1020; and

(4) Be in compliance with applicable statutes regulating surety company participation in insurance-type risks.

(b) A surety bond that you submit as OSFR evidence must include all the information required by § 253.41.

§ 253.32 Are there alternative methods to demonstrate OSFR?

The Director may accept other methods to demonstrate OSFR that provide equivalent assurance of timely satisfaction of claims. This may include pooling, letters of credit, pledges of treasury notes, or other comparable methods. Submit your proposal, together with all the supporting documents, to the Director at the address listed in § 253.45. The Director's decision whether to approve your alternative method to evidence OSFR is by this rule committed to the Director's sole discretion and is not subject to administrative appeal under 30 CFR part 290 or 43 CFR part 4.

Subpart D—Requirements for Submitting OSFR Information**§ 253.40 What OSFR evidence must I submit to MMS?**

(a) You must submit to MMS:

(1) A single demonstration of OSFR that covers all the COFs for which you are the designated applicant;

(2) A completed and unaltered Form MMS-1016;

(3) MMS forms that identify your COFs (Form MMS-1021, Form MMS-1022), and the methods you will use to demonstrate OSFR (Form MMS-1018, Form MMS-1019, Form MMS-1020). Forms are available from the address listed in § 253.45;

(4) Any insurance certificates, indemnities, and surety bonds used as OSFR evidence for the COFs for which you are the designated applicant;

(5) A completed Form MMS-1017 for each responsible party, unless you are the only responsible party for the COFs covered by your OSFR demonstration; and

(6) Other financial instruments and information the Director requires to support your OSFR demonstration under § 253.32.

(b) Each MMS form you submit to MMS as part of your OSFR demonstration must be signed. You also must attach to Form MMS-1016 proof of your authority to sign.

§ 253.41 What terms must I include in my OSFR evidence?

(a) Each instrument you submit as OSFR evidence must specify:

(1) The effective date, and except for a surety bond, the expiration date;

(2) That termination of the instrument will not affect the liability of the instrument issuer for claims arising from an incident (i.e., oil-spill discharge or substantial threat of the discharge of oil) that occurred on or before the effective date of termination;

(3) That the instrument will remain in force until the termination date or until the earlier of:

(i) Thirty calendar days after MMS and the designated applicant receive from the instrument issuer a notification of intent to cancel; or

(ii) MMS receives from the designated applicant other acceptable OSFR evidence; or

(iii) All the COFs to which the instrument applies are permanently abandoned in compliance with 30 CFR part 250 or equivalent State requirements;

(4) That the instrument issuer agrees to direct action for claims made under OPA up to the guaranty amount, subject to the defenses in paragraph (a)(6) of this section and following the procedures in § 253.60 of this part;

(5) An agent in the United States for service of process; and

(6) That the instrument issuer will not use any defenses against a claim made under OPA except:

(i) The rights and defenses that would be available to a designated applicant or responsible party for whom the guaranty was provided; and

(ii) The incident (i.e., oil-spill discharge or a substantial threat of the discharge of oil) leading to the claim for removal costs or damages was caused by willful misconduct of a responsible party for whom the designated applicant demonstrated OSFR.

(b) You may not change, omit, or add limitations or exceptions to the terms and conditions in an MMS form that you submit as part of your OSFR demonstration. If you attempt to do this, MMS will disregard the changes, omissions, additions, limitations, or exceptions and by operation of this rule MMS will consider the form to contain all the terms and conditions included on the original MMS form.

§ 253.42 How can I amend my list of COFs?

(a) If you want to add a COF that is not identified in your current OSFR demonstration, you must submit to MMS a completed Form MMS-1022. If applicable, you also must submit any additional indemnities, surety bonds, insurance certificates, or other instruments required to extend the coverage of your original OSFR demonstration to the COFs to be added. You do not need to resubmit previously accepted audited annual financial statements for the current fiscal year.

(b) If you want to drop a COF identified in your current OSFR demonstration, you must submit to MMS a completed Form MMS-1022. You must continue to demonstrate OSFR for the COF until MMS approves OSFR evidence for the COF from another designated applicant, or OSFR is no longer required (e.g., until a well that

is a COF is properly plugged and abandoned).

§ 253.43 When is my OSFR demonstration or the amendment to my OSFR demonstration effective?

(a) MMS will notify you in writing when we approve your OSFR demonstration. If we find that you have not submitted all the information needed to demonstrate OSFR, we may require you to provide additional information before we determine whether your OSFR evidence is acceptable.

(b) Except in the case of self-insurance or an indemnity, MMS acceptance of OSFR evidence is valid until the surety bond, insurance certificate, or other accepted OSFR instrument expires or is canceled. In the case of self-insurance or indemnity, acceptance is valid until the first day of the 5th month after the close of your or your indemnitor's current fiscal year.

§ 253.44 When must I comply with this part?

If you are the designated applicant for one or more COFs covered by a Certificate of Financial Responsibility (CFR) issued under 33 CFR part 135 that expires after October 13, 1998, you must submit to MMS your evidence of OSFR for all your COFs no later than the earliest date that an existing CFR for any of your COFs expires. All other designated applicants must submit to MMS evidence of OSFR for their COFs no later than April 8, 1999.

§ 253.45 Where do I send my OSFR evidence?

Address all correspondence and required submissions related to this part to: U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico Region, Oil Spill Financial Responsibility Program, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

Subpart E—Revocation and Penalties

§ 253.50 How can MMS refuse or invalidate my OSFR evidence?

(a) If MMS determines that any OSFR evidence you submit fails to comply with the requirements of this